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7 SEMYON NEYS,  
8 Plaintiff,  
9 v.  
10 MAYO, et al.,  
11 Defendants.

Case No. [12-cv-04241-JD](#)

**ORDER GRANTING DEFENDANTS'  
MOTION FOR SUMMARY JUDGMENT**

Re: Dkt. No. 36

12  
13 This is a civil rights case brought pro se by a former prisoner. Plaintiff presents a claim of  
14 excessive force by several guards while he was at San Francisco County Jail. He states that on  
15 March 15, 2012, he was forced down on the floor while handcuffed and assaulted with hands and  
16 feet by defendants, Sheriff's Deputies Mayo, Forde, and Ng. Complaint at 3.<sup>1</sup>

17 Defendants filed a motion for summary judgment on December 1, 2014. Plaintiff has not  
18 filed an opposition or otherwise communicated with the Court despite defendants filing an  
19 additional notice of plaintiff's non-opposition on January 6, 2015.<sup>2</sup> The Court will still look to the  
20 merits of the motion, which is granted.

21 **DISCUSSION**

22 **Motion for Summary Judgment**

23 **A. Standard of Review**

24 Summary judgment is proper where the pleadings, discovery and affidavits show that there  
25 is "no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of

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27 <sup>1</sup> Plaintiff was a convicted federal prisoner at the time of this incident. Motion for Summary  
28 Judgment ("MSJ"), Ex. A. The complaint was filed on August 10, 2012.

<sup>2</sup> Defendants indicate that plaintiff was released from custody on November 27, 2014. Reply at 2.

1 law.” Fed. R. Civ. P. 56(a). Material facts are those which may affect the outcome of the case.  
2 *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A dispute as to a material fact is  
3 genuine if there is sufficient evidence for a reasonable jury to return a verdict for the nonmoving  
4 party. *Id.*

5 The moving party for summary judgment bears the initial burden of identifying those  
6 portions of the pleadings, discovery and affidavits which demonstrate the absence of a genuine  
7 issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986); *Nissan Fire & Marine*  
8 *Ins. Co. v. Fritz Cos.*, 210 F.3d 1099, 1102 (9th Cir. 2000). When the moving party has met this  
9 burden of production, the nonmoving party must go beyond the pleadings and, by its own  
10 affidavits or discovery, set forth specific facts showing that there is a genuine issue for trial. If the  
11 nonmoving party fails to produce enough evidence to show a genuine issue of material fact, the  
12 moving party wins. *Id.*

13 **B. Excessive Force**

14 “After incarceration, only the unnecessary and wanton infliction of pain . . . constitutes  
15 cruel and unusual punishment forbidden by the Eighth Amendment.” *Whitley v. Albers*, 475 U.S.  
16 312, 319 (1986) (omission in original) (internal quotation marks omitted). Whenever prison  
17 officials stand accused of using excessive force in violation of the Eighth Amendment, the  
18 deliberate indifference standard is inappropriate. *Hudson v. McMillian*, 503 U.S. 1, 6 (1992).  
19 Instead, the core judicial inquiry is whether force was applied in a good-faith effort to maintain or  
20 restore discipline, or maliciously and sadistically to cause harm. *Id.* at 6-7; *Whitley*, 475 U.S. at  
21 320-21.

22 In determining whether the use of force was for the purpose of maintaining or restoring  
23 discipline, or for the malicious and sadistic purpose of causing harm, a court may evaluate the  
24 need for application of force, the relationship between that need and the amount of force used, the  
25 extent of any injury inflicted, the threat reasonably perceived by the responsible officials, and any  
26 efforts made to temper the severity of a forceful response. *Hudson*, 503 U.S. at 7; *see also Spain*  
27 *v. Procunier*, 600 F.2d 189, 195 (9th Cir. 1979) (guards may use force only in proportion to need  
28 in each situation); *see, e.g., Furnace v. Sullivan*, 705 F.3d 1021, 1027 (9th Cir. 2013) (reversing

1 district court's grant of defendants' motion for summary judgment because plaintiff's evidence  
2 that guards emptied two pepper-spray canisters at him when he put his hands on his cell's food  
3 port opening raised a disputed issue of material fact regarding whether he posed a threat that  
4 justified defendants using pepper spray); *Clement v. Gomez*, 298 F.3d 898, 904 (9th Cir. 2002)  
5 (pepper spraying fighting inmates a second time after hearing coughing and gagging from prior  
6 spray was not malicious and sadistic for purpose of causing harm, where initial shot of spray had  
7 been blocked by inmates' bodies).

8           **C.     Facts**

9           The Court has reviewed defendants' motion for summary judgment and plaintiff's verified  
10 complaint. Defendants do not recall any incident involving plaintiff on the day at issue. MSJ at 3.  
11 While the complaint contains only a few allegations, plaintiff provided some additional  
12 information when he was deposed by defendants on April 15, 2014.

13           In his deposition, plaintiff stated that he was awoken in the middle of the night by  
14 defendant Mayo who told plaintiff he needed to move to a different bunk. MSJ at 4. Plaintiff  
15 alleged that Mayo handcuffed him and while the handcuffs were too tight, plaintiff did not ask for  
16 them to be loosened. *Id.* Plaintiff stated that several other deputies arrived and lifted his arms into  
17 the air while transporting him, but plaintiff was unable to provide additional details regarding how  
18 these deputies pulled his arms or touched him. *Id.* Plaintiff assumes Mayo was escorting him but  
19 does not know for sure. *Id.*

20           Plaintiff stated that he was taken to an interview room, thrown onto the ground and  
21 punched and kicked. *Id.* Plaintiff was unable to provide details concerning who threw him onto  
22 the floor. *Id.* at 5. Plaintiff stated that defendant Forde entered the room at some point and kicked  
23 him, but he does not recall where on his body he was kicked. *Id.* Then, more unidentified  
24 deputies came into the room and hit and kicked plaintiff for approximately thirty seconds. *Id.*  
25 Then Mayo and defendant Ng came into the room. *Id.* Plaintiff stated that Mayo pushed his torso  
26 against the table and someone else, perhaps Ng, punched him in the ribs. *Id.* Plaintiff does not  
27 know how many times he was punched. *Id.* Then he was sitting in a chair and everyone left the  
28 room. *Id.* Mayo returned and took plaintiff back to his bunk. *Id.* Plaintiff stated he was bruised,

1 but never sought medical attention from jail medical staff and never requested anyone to document  
2 his injuries. MSJ at 4.

3 The defendants do not recall any incident with plaintiff on March 15, 2012, but they state  
4 that they did not punch, kick, or assault plaintiff. *Id.* at 6.

5 **D. Analysis**

6 Defendants contend that there was no incident where they assaulted plaintiff. Plaintiff has  
7 not filed an opposition or otherwise communicated with the Court, but the Court has still reviewed  
8 his verified complaint in considering the motion for summary judgment. He stated in his  
9 complaint that he was injured while being handcuffed and was then assaulted by defendants who  
10 used their hands and feet. He provides very little additional information.

11 Defendants have met their burden in demonstrating that there is no genuine dispute as to  
12 any material fact. Plaintiff stated that the handcuffs caused him pain, but conceded that he did not  
13 request that the handcuffs be loosened. Plaintiff was also unable to answer many questions  
14 regarding the assault such as who was responsible or where he was struck. It is also undisputed  
15 that plaintiff never sought medical care and that there was no documentation of the injuries.  
16 Plaintiff has failed to produce any evidence to show a genuine issue of material fact, and the vague  
17 allegations from the complaint are insufficient to counter defendants' evidence. Therefore,  
18 summary judgment is granted to defendants.<sup>3</sup>

19 **CONCLUSION**

20 1. The motion for summary judgment (Docket No. 36) is **GRANTED**.  
21 2. The Clerk shall close the file.

22 **IT IS SO ORDERED.**

23 Dated: March 9, 2015

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24 James Donato  
25 United States District Judge  
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28 <sup>3</sup> Because the Court has not found a constitutional violation, the qualified immunity argument will  
not be addressed.

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12 **CERTIFICATE OF SERVICE**  
13

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on 3/9/2015, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Semyon Neys ID: 607720  
Glenn E. Dyer Detention Facility  
550 6th Street  
Oakland, CA 94607

Dated: 3/9/2015

Richard W. Wiking  
Clerk, United States District Court

By: Lisa R. Clark  
LISA R. CLARK, Deputy Clerk to the  
Honorable JAMES DONATO